



## **What's Wrong with Senator Cannella's CEQA Bill**

Opponents of California's environmental laws are trying to leverage the closed-door budget talks to eviscerate the California Environmental Quality Act (CEQA). A proposed bill by Senator Cannella was leaked to the L.A. Times. Below is a brief analysis of what's wrong with that bill. We urge the Governor and legislative leaders to use the transparent legislative process to discuss any proposed changes to California's landmark environmental laws.

### **Leaves Enforcement of CEQA's EIR Requirements to the Attorney General**

Only the Attorney General could enforce the EIR requirements of CEQA. No private enforcement of the EIR requirements would be permitted. If a state agency violates CEQA's EIR requirements the Attorney General may be prohibited from filing an action against a client state agency, leaving the possibility of no CEQA enforcement against client state agencies.

### **Prohibits Comments After Close of Comment Period Even if the Project is Changed**

Comments at a public hearing on a negative declaration and mitigated negative declaration presented after the close of the public comment period — even if the proposed project is completely changed after the close of the public comment period — could be ignored by the public agency and could not be included in any lawsuit challenging the negative declaration or mitigated negative declaration.

### **Requires a \$50,000 Bond from Anyone Challenging a Negative Declaration or Mitigated Negative Declaration**

Individuals or organizations challenging a public agency's decision to prepare a negative declaration or mitigated negative declaration rather than an EIR would have to post a \$50,000 bond. This requirement would effectively preclude private enforcement of CEQA when combined with the requirement that only the Attorney General can challenge the legal adequacy of an EIR.

### **Restricts the Recovery of Attorney's Fees**

This proposal places restrictions on a prevailing party's ability to recover his or her attorney's fees for enforcing CEQA's requirements. These restrictions on recovering attorney's fees combined with the other provisions mentioned above severely restrict private enforcement of CEQA.

### **Eliminates Fair Argument Standard for Preparing an EIR**

The proposal eliminates the fair argument standard, a fundamental precept of CEQA that requires the preparation of an EIR unless there is a high degree of certainty that a project would not have a significant impact on the environment.

### **Exempts Evaluation of a Refinery's Greenhouse Gas Emissions from CEQA**

Review of the cumulative greenhouse gas generation effects of development projects, including large industrial projects like refineries, would be prohibited if the project is consistent with an unrelated, vaguely-described state or local plan addressing greenhouse gas emissions.

### **Restricts the Analysis of a Development Project's Cumulative Effects**

The proposal would restrict the analysis of a development project's cumulative contribution to unhealthy air quality or water quality impacts, for example, by restricting the public agency's cumulative impact analysis to those projects approved or proposed at the time the public agency decides to prepare an environmental impact report, or 90 days prior to the circulation of an initial study.

This provision of the Cannella draft bill combined with the elimination of the fair argument standard would effectively eliminate the existing requirement that public agencies evaluate a proposed development project's cumulative effect on the existing environment.

### **Expands the Existing Urban Residential Infill Exemption to Encourage Sprawl**

Sections 1, 4, and 5 of the Cannella draft bill would redefine "infill site" and make other changes to existing urban residential infill exemptions in CEQA to include commercial development in urban areas and residential and commercial development in any "substantially developed" area of a county as long as the development project is consistent with the applicable local general plan.

This expansion of the existing urban residential infill exemption will encourage sprawl and the economic and public health costs associated with sprawl. Additionally, the expansion of the existing infill development exemption to include commercial and residential development in rural communities will frustrate the state's ability to reduce vehicle miles travelled in order to attain the greenhouse gas reduction goal established by the California Air Resources Board.

### **Exempts the installation and construction of structures that provide broadband services within urbanized areas**

This is obviously a special interest provision inserted at the request of some industry representative.